

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PETER WIRTH, *as Personal Representative
of the Estate of Santiago Sebastian Ortiz, et al.,*

Plaintiffs,

v.

No. 2:20-cv-804 GBW/KRS

PHC-LAS CRUCES, INC., et al.,

Defendants.

THIRD ORDER TO SHOW CAUSE

THIS MATTER comes before the Court *sua sponte* after review of the record. Plaintiffs filed their Complaint on August 22, 2020. (Doc. 1). On November 24, 2020 the Court ordered Plaintiffs to show cause why the case should not be dismissed for want of prosecution since no action had been taken to serve Defendants for more than ninety days. (Doc. 4). Plaintiffs responded on December 8, 2020 with a filing titled “Plaintiffs’ Voluntary Order of Dismissal Without Prejudice.” (Doc. 5). After several attempts by the Clerk’s Office to clarify whether Document 5 was intended to be a notice to voluntarily dismiss the case under Rule 41, with no response from Plaintiffs’ counsel, the Court entered a Second Order to Show Cause on April 16, 2021. (Doc. 6). On April 23, 2021, Plaintiffs responded by filing a “Motion to Consolidate Causes Following Defendants’ Removal of Concurrent State Action to Federal Court.” (Doc. 7). The Court denied that motion without prejudice on April 27, 2021 because Plaintiffs failed to state whether the motion was opposed, did not include a certificate that the motion had been served on Defendants, and did not file the motion in the case it sought to consolidate with this case, in violation of Local Rules 7.1(a) and (b). (Doc. 8).

It has been more than ninety days since Plaintiffs’ Motion to Consolidate was denied and Plaintiffs have again failed to take any steps to serve Defendants. “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the

plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m); D.N.M. LV-Civ. 41.1 (“A civil action may be dismissed if, for a period of ninety (90) days no steps are taken to move the case forward.”).

IT IS THEREFORE ORDERED that on or before **August 10, 2021** Plaintiffs shall show cause in writing why this matter should not be dismissed for want of prosecution or shall take action to prosecute this action.

A handwritten signature in black ink, reading "Kevin Sweazea". The signature is written in a cursive, flowing style.

KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE